



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 15-3

September 29, 2016

Petition of Comcast Cable Communications, LLC to establish and adjust the basic service tier programming, equipment, and installation rates for the communities in Massachusetts served by Comcast Cable Communications, LLC that are currently subject to rate regulation.

RATE ORDER

APPEARANCES:

PETITIONER

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- and -

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FOR: Comcast Cable Communications, Inc.

INTERVENORS

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FOR: Town of Somerset

I. INTRODUCTION

In this Order, the Department of Telecommunications and Cable (“Department”) approves the petition of Comcast Cable Communications, LLC (“Comcast” or “Company”), in which Comcast seeks to establish basic service tier (“BST”) programming, equipment, and installation maximum permitted rates (“MPR”) for the regulated Massachusetts communities served by Comcast. A list of the regulated Massachusetts communities served by Comcast can be found in the Rate Schedule enclosed as Attachment 1.

II. PROCEDURAL HISTORY

On September 30, 2015, Comcast filed Federal Communications Commission (“FCC”) Forms 1240 with the Department in which Comcast proposed BST programming MPRs for each of its regulated Massachusetts communities.¹ *See* Exh. 1-Exh. 124. Comcast also filed a nationwide FCC Form 1205 in which the Company proposed equipment and installation MPRs for all of its regulated Massachusetts communities.² *See* Exh. 126. Consistent with FCC regulations, Comcast’s proposed BST programming, equipment, and installation rates became effective on January 1, 2015. 47 C.F.R. § 76.933(g).

On February 11, 2016, the Department issued a Notice of Public Hearing, Order of Notice, and Letter Notice to Issuing Authorities. On March 16, 2016, the Town of Somerset submitted a petition to intervene in the rate proceeding, which the Department approved on April 1, 2016. The Department issued its First Set of Information Requests on March 17, 2016. Comcast filed its responses with a motion for protective treatment of confidential information on

¹ Citations in this Order to Comcast’s FCC Forms 1240 for the regulate communities are to Exh. 1-Exh. 124. Citations to any revised Form 1240 are to the corresponding response to a Department Information Request (IR) or Record Request (RR).

² Citation to Comcast’s FCC Form 1205 is to Exh. 126. Citation to Comcast’s revised FCC Form 1205 is to IR 1-1.

March 31, 2016. On April 13, 2016, the Department held public and evidentiary hearings. At the hearings, Comcast submitted its return of service and proof of publication of the hearing notice, which the Hearing Officer accepted into the record. Hearing Transcript (“Tr.”) at 6-7 (Apr. 13, 2016). During the evidentiary hearing, the Department issued eight record requests on behalf of the Department and one record request for the Town of Somerset. *Id.* at 12, 18-22, 25-26, 28-29, 32, 35, 44. Comcast submitted its responses to those record requests on April 28, 2016 with a supplemental motion for protective treatment of confidential information. The Department granted Comcast’s motion and supplemental motion for protective treatment of confidential information on June 20, 2016.

III. ANALYSIS AND FINDINGS

The evidentiary record consists of 126 exhibits from Comcast, six Department information requests and Comcast’s responses, the transcripts to the public and evidentiary hearing, eight record requests issued on behalf of the Department and Comcast’s responses, and 1 record request issued on behalf of the Town of Somerset and Comcast’s response. After review and consideration, the Department approves Comcast’s FCC Forms 1240 and Form 1205, as amended, and finds the proposed rates to be reasonable in accordance with and subject to the Department’s findings below.

A. FCC Effective Competition Findings

On June 3, 2015, the FCC released a Report and Order revising the FCC’s rules related to Effective Competition. *See Amendment to the Commission’s Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, MB Docket No. 15-53, *Report and Order*, 30 FCC Rcd 6574 (rel. June 3, 2015) (“*Effective Competition Order*”). Relevant to this proceeding, the FCC adopted a rebuttable presumption that cable operators are

subject to “Competing Provider Effective Competition” and prohibited a franchising authority, such as the Department, from regulating basic cable rates unless it demonstrates that a cable system is not subject to Competing Provider Effective Competition. *See* 47 C.F.R. §§ 76.906, 76.910(b)(4) (2015); *Effective Competition Order* at 6574-6575, ¶ 1. The FCC’s rules became effective on September 9, 2015. *See Notice of Effective Date of Revised Effective Competition Rules*, MB Docket No. 15-53, *Public Notice*, 30 FCC Rcd 10124, 10124 (rel. Sept. 17, 2015). Franchising authorities with existing certifications to regulate basic cable rates that seek to remain certified were directed to file a revised Form 328 with evidence rebutting the presumption of Competing Provider Effective Competition on or before December 8, 2015. *Id.* at 10125.

On December 8, 2015, the Department filed revised FCC Forms 328 to recertify 84 communities served by Comcast. *See Form 328: Certification of Franchising Authority to Regulate Basic Cable Service Rates and Initial Finding of Lack of Effective Competition*, Inbox-76.910, *Massachusetts Department of Telecommunications and Cable FCC Form 328* (filed Dec. 8, 2015). On December 17, 2015, the FCC released a public notice announcing the expiration of franchising authorities’ certifications to regulate basic cable service rates that did not fall into one of five categories. *See Findings of Competing Provider Effective Competition Following December 8, 2015 Filing Deadline for Existing Franchise Authority Recertification*, MB Docket No. 15-53, *Public Notice*, 30 FCC Rcd 14293 (rel. Dec. 17, 2015) (“*Effective Competition Findings PN*”).³ The five categories of communities for which certifications did not automatically expire were communities where: a franchising authority filed revised FCC Forms

³ The Department’s certifications to regulate basic cable service for the Towns of Holbrooke, Phillipston, Raynham, and Stoughton expired on December 8, 2015, as the certifications for those Towns did not fall under one of the six categories. Accordingly, the Department does not review for approval the FCC Forms 1240 for those communities in this Order.

328; there were pending opposed Effective Competition petitions; there were pending petitions for reconsideration of certification; there were pending petitions for reconsideration of an Effective Competitive decisions; and there were pending applications for review of Effective Competition decisions. *Id.* at 14294 (citing *Effective Competition Order* at 6592, ¶ 27). The FCC also identified a sixth category of pending unopposed Effective Competition petitions for which a revised FCC Form 328 was not filed and granted those petitions based on the new presumption of Competing Provider Effective Competition.⁴ Accordingly, the Towns of Holbrooke, Phillipston, Raynham, and Stoughton and the Cities of Chelsea, Malden, and Medford were found subject to Effective Competition and the Department will not review for approval their FCC Form 1240. The Department retained certifications to regulate basic service cable rates in 117 communities.⁵

On April 21, 2016, the FCC released a Memorandum Opinion and Order granting Comcast's petitions for Effective Competition in 37 communities.⁶ *Petitions for Determination of Effective Competition in Various Massachusetts Communities*, MB Docket No. 13-157 *et al.*, *Memorandum Opinion & Order*, 31 FCC Rcd 3790 (rel. Apr. 21, 2016). These were the communities where the Department's certifications to regulate basic cable service rates did not

⁴ Comcast had pending unopposed petitions for the Cities of Chelsea, Malden, and Medford. The Department relying on the FCC's grant of those pending Effective Competition petitions, does not review for approval the FCC Forms 1240 for those communities in this Order.

⁵ The Department also filed a revised FCC Form 328 for the Town of Falmouth. At the time of the filing the Department was not certified to regulate the basic cable service rates for the Town and it has a pending petition for reconsideration of an Effective Competition decision. The FCC is unclear in its Effective Competition Order whether filing the revised FCC Form 328 was sufficient to grant a certification to the Department before the FCC rules on its pending petition for reconsideration of an Effective Competition decision. Accordingly, the Department will not review for approval the FCC Form 1240 for the Town of Falmouth in this Order.

⁶ The Department only has certifications for 35 of the 37 communities for which Comcast sought a finding of Effective Competition. Specifically, the Department does not have certifications for the Towns of Ashby and Shirley. Accordingly, there are no FCC Forms 1240 for those two communities submitted to the Department for review in this proceeding.

automatically expire due to pending opposed Effective Competition petitions.⁷ *See Effective Competition Findings PN* at 14304-14305. Accordingly, the Department will not review for approval the FCC Forms 1240 for the Towns of Ashland, Bellingham, Billerica, Chelmsford, Cohasset, Danvers, Dover, Duxbury, Easton, Foxborough, Hanover, Hingham, Holliston, Hopedale, Hull, Lakeville, Marblehead, Maynard, Medway, Mendon, Middleton, Milford, Millis, Norfolk, North Andover, Norwell, Randolph, Stow, Templeton,⁸ Topsfield, Walpole, Wayland, Weston, and Wrentham and the City of Leominster.⁹

B. Comcast's FCC Forms 1240

A cable operator must calculate its rates upon specific FCC-created forms incorporating the provisions of its rate regulations. *See* 47 C.F.R. §§ 76.922, 76.930. A cable operator is allowed to update annually its BST programming rates to account for inflation; changes in the number of regulated channels; and changes in external costs, including, but not limited to, programming costs, copyright costs, and franchise related costs ("FRCs"). *Id.* § 76.922(e). To adjust the rates on the FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the cable operator must demonstrate that its projections are reasonably certain and reasonably quantifiable. *See Id.* § 76.922(e)(2)(ii)(A), 76.922(e)(2)(iii)(A). Projections involving copyright fees, retransmission consent fee costs,

⁷ The certification for the Town of Templeton was also pending because the Department filed a revised FCC Form 328.

⁸ The Department filed a petition for reconsideration of the finding of Effective Competition for the Town of Templeton. *See Petition for Determination of Effective Competition in Templeton, MA (MA0127)*, MB Docket No. 13-172, *Mass. Dept. of Telecomms. & Cable Petition for Reconsideration* (May 23, 2016). The petition is currently pending.

⁹ While not stated in the *Memorandum Opinion and Order*, the FCC has previously recognized the filing date of a petition for a finding of Effective Competition as the effective date that a cable operator is subject to effective competition. *See e.g., Appeal of Local Rate Order of Lake Minnetonka Cable Commission*, CSB-A-0724, *Order*, 20 FCC Rcd 15687, 15688 ¶ 4 (rel. Oct. 3, 2005). While the FCC is addressing multiple Comcast petitions filed on different days, all of the petitions addressed were filed in 2013 and as such each community would be considered subject to Effective Competition prior to Comcast filing its FCC Forms 1240 for the communities with the Department.

other programming costs, FCC regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. *See Id.* § 76.922(e)(2)(ii)(A). Cable operators may also project for increases in FRCs to the extent they are reasonably certain and reasonably quantifiable. *Id.* FRC projections, however, are not presumed to be reasonably certain and reasonably quantifiable. *Id.*

The Department reviews rate adjustments on an FCC Form 1240 pursuant to the FCC's rate regulations. *See Id.* § 76.922(a). Specifically, the FCC directs local rate regulators, such as the Department, to ensure that the approved rates are in compliance with the Communications Act of 1934, as amended ("Communications Act"), and do not exceed the MPRs calculated using the FCC's rate forms. *Id.* The Department may accept, as compliant with the statute, BST programming rates that do not exceed the approved MPR as determined by federal regulations. *See Id.* § 76.922(a), 76.922(c). In addition, the Department shall approve only those rates that it deems reasonable. *See* 47 U.S.C. § 543; G.L. c. 166A, §§ 2, 15; 47 C.F.R. § 76.937(d)-(e). The cable operator has the burden of proving that its proposed BST programming rates comply with Section 623 of the Communications Act, and implementing regulations. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(a) (regulation assigning the burden of proof to the cable operator); *Implementation of Sections of the Cable Television Consumer Prot. & Competition Act of 1992: Rate Regulation, Report & Order & Further Notice of Proposed Rulemaking*, 8 F.C.C.R. 5631, 5716, ¶ 128 (May 3, 1993) ("*FCC Rate Order*").

The enclosed Rate Schedule details for each regulated community, the last Department approved Operator Selected Rate ("OSR"), Comcast's proposed MPR for the projected period, and Comcast's proposed OSR for the project period. *See* Attachment 1. The Department in investigating Comcast's FCC Forms 1240 sought information concerning: the BST programming

OSR for each community, external costs, subscriber counts, programming, and the Broadcast TV fee. IR 1-2 – IR 1-6; RR 3 – RR 8. The Department has reviewed each of Comcast’s FCC Forms 1240. Each FCC Form 1240 consists of “a series of calculations, involving both the projection of future events and an accounting of events which are known to have happened” and implements the federal laws and regulation “pertaining to the costs of a system’s regulated tiers.” *Instructions FCC Form 1240 Annual Updating of Maximum Permitted Rates for Regulated Cable Services* (“*FCC Form 1240 Instructions*”), at 1 (July 1996). The Department reviews, each FCC Form 1240 to verify the accuracy of the data on the form and that the data was calculated in compliance with the relevant federal laws and regulations. 47 C.F.R § 76.922(a). Once the Department has determined the accuracy of the data and that data was calculated in accordance with federal laws and regulations, the MPR is presumed reasonable. *Id.*; *FCC Form 1240 Instructions* at 5. The Department then compares the OSR to the MPR on each FCC Form 1240. 47 C.F.R. § 76.922 An OSR is compliant with federal laws and regulations and considered reasonable if the OSR does not exceed the approved MPR. *See Id.* § 76.922(a), 76.922(c).

After review and investigation, the Department has verified the accuracy of the data on each of Comcast’s FCC Forms 1240, as amended, and determined that the data was calculated in compliance with federal laws and regulations. *See* Exh. 1-Exh. 4, Exh. 6-Exh. 8, Exh. 10-Exh. 11, Exh. 13-Exh. 19, Exh. 22, Exh. 24, Exh. 26-Exh. 29, Exh. 31, Exh. 33-Exh. 34, Exh. 36-Exh. 38, Exh. 40-Exh. 45, Exh. 47-Exh. 50, Exh. 54, Exh. 58, Exh. 60-Exh. 61, Exh. 63, Exh. 69, Exh. 73-Exh. 77, Exh. 80-Exh. 81, Exh. 83-Exh. 86, Exh. 88-Exh. 90, Exh. 93-Exh. 102, Exh. 105-Exh. 106, Exh. 110-Exh. 111, Exh. 113-Exh. 117, Exh. 119-Exh. 122, Exh. 124. The Department also finds that the proposed OSR in each community does not exceed the approved

MPR for each community. *Id.*; IR 1-2. As such, the proposed OSRs comply with federal laws and regulation and are therefore reasonable. 47 U.S.C. § 543; G.L. c. 166A, § 15; 47 C.F.R. § 76.922(a), 76.922(c). Accordingly, the Department approves Comcast's FCC Forms 1240, as amended, for each of the 82 regulated communities.

C. Comcast's FCC Form 1205

Cable Operators use FCC Form 1205 to calculate rates for installations and equipment such as converters and remote controls, based upon actual capital costs and expenses. *FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equipment and Installation* ("FCC Form 1205 Instructions"), at 1 (June 1996). A cable operator annually prepares its FCC Form 1205 using information from its previous fiscal year. In this proceeding, Comcast's FCC Form 1205 is for the fiscal year ending December 31, 2014. *See* Exh. 126; IR 1-1.

In accordance with the FCC's regulatory requirements, subscriber charges established by FCC Form 1205 may not exceed charges based on actual costs. 47 C.F.R. § 76.923(a)(2). The cable operator has the burden to demonstrate that its proposed rates for equipment and installations comply with Section 623 of the Communications Act and its implementing regulations. *See* 47 U.S.C. § 543; 47 C.F.R. § 76.937(a) (regulation assigning the burden of proof to the cable operator); *FCC Rate Order* at 5716, ¶ 128. In its FCC Form 1205 filing, Comcast proposed adjusting its MPRs and OSRs for equipment and installations. *See* Exh. 126; IR 1-1; *FCC Form 1205 Instructions* at 2-3. In examining the changes to Comcast's MPRs and OSRs for installation and equipment, the Department reviews the information and calculations Comcast reported on its FCC Form 1205, and the accompanying explanation of the calculations. The Department also considers Comcast's responses to Department inquiries and testimony from the evidentiary hearing. As set forth below, the Department determines that Comcast's FCC

Form 1205, as amended, has been prepared in compliance with federal laws and regulations, and that the proposed rates are reasonable. G.L. c. 166A, § 15; 47 C.F.R. § 76.923.

1. Outside Drops

The Department has previously determined that it is inappropriate for Comcast to include the time element associated with the outside drop in the average installation time for an unwired installation as the Company already capitalizes the cost associated with the drop portion of the installation. *See, e.g., Petition of Comcast Cable Commc'ns, LLC to Establish & Adjust the Basic Serv. Tier Programming, Equip., & Installation Rates for the Cmtys. in Mass. Served by Comcast Cable Commc'ns, LLC that are Subject to Rate Regulation* ("Comcast Rate Setting Petition"), D.T.C. 14-4, *Rate Order* at 8-9 (Sept. 17, 2015); *Comcast Rate Setting Petition*, D.T.C. 13-5, *Rate Order* at 7-8 (Mar. 13, 2014); *Comcast Rate Setting Petition*, D.T.C. 12-2, *Rate Order* at 13-15 (Jan. 30, 2013); *Comcast Rate Setting Petition*, D.T.C. 10-8, *Rate Order* at 7-8 (Jan. 27, 2012); *Comcast Rate Setting Petition*, D.T.C. 09-6, *Rate Order* at 10-11 (Oct. 29, 2010); *Comcast Rate Setting Petition*, D.T.C. 08-6, *Rate Order* at 6 (Oct. 30, 2009); *Comcast Rate Setting Petition*, C.T.V./D.T.C. 06-3, *Rate Order* at 3-5 (Oct. 19, 2007); *Comcast Rate Setting Petition*, C.T.V. 04-3/04-4, *Rate Order* at 34-36 (Aug. 30, 2005). Comcast submitted a FCC Form 1205 in this proceeding that includes capitalized subscriber drops in the average unwired installation rates. Exh. 126. A cable operator may capitalize subscriber drop labor costs *or* include these costs in its installation rates. *See* FCC Form 1205 Instructions at 7. Comcast's initial filing did both. *See* Exh. 126. The Department issued an information request addressing this calculation, and on March 31, 2016, Comcast submitted an amended FCC Form 1205 that removed the subscriber drops from its calculations. *See* IR 1-1.

The Company's amended FCC Form 1205 excluded the time element associated with subscriber drops in the same manner as costs were excluded on prior Comcast FCC Forms 1205 approved by the Department. *Id.* Accordingly, the average hours per unwired home installation decreased from 1.1178 hours to 0.9078 hours. *Compare* Exh. 126, with IR 1-1. Because of this decrease in labor hours, the MPR for an unwired home installation decreased from \$39.52 to \$32.09. *Compare* Exh. 126, with IR 1-1. Comcast's OSR for unwired installation, however, is \$30.00, which is lower than the revised MPR of \$32.09 for unwired home installation. *See* IR 1-1; IR 1-2. Because the OSR is below the revised MPR, Comcast has not charged customers a rate above the maximum permitted. Accordingly, Comcast does not need to adjust its proposed OSR for unwired home installation.

2. Commissions

The Department has also previously determined that commissions are a marketing expense that should not be included in the FCC Form 1205 Schedule B operating costs. *See, e.g., Comcast Rate Setting Petition*, D.T.C. 14-4, *Rate Order* at 9-10 (Sept. 17, 2015); *Comcast Rate Setting Petition*, D.T.C. 13-5, *Rate Order* at 9 (Mar. 13, 2014); *Comcast Rate Setting Petition*, D.T.C. 12-2, *Rate Order* at 13-15 (Jan. 30, 2013); *Comcast Rate Setting Petition*, D.T.C. 10-8, *Rate Order* at 7-8 (Jan. 27, 2012); *Comcast Rate Setting Petition*, D.T.C. 09-6, *Rate Order* at 10-11 (Oct. 29, 2010); *Comcast Rate Setting Petition*, D.T.C. 08-6, *Rate Order* at 6 (Oct. 30, 2009); *Comcast Rate Setting Petition*, C.T.V./D.T.C. 06-3, *Rate Order* at 3-5 (Oct. 19, 2007); *Comcast Rate Setting Petition*, C.T.V. 04-3/04-4, *Rate Order* at 36-37 (Aug. 30, 2005). Comcast initially submitted a FCC Form 1205 that included sale commissions expenses. *See* Exh. 126. On March 31, 2016, in response to the Department's information request, Comcast submitted an amended FCC Form 1205 removing sales commissions from its calculations. *See*

IR 1-1. The revised FCC Form 1205 removes costs associated with sales commissions by reducing the percentage of overall operating costs included in the regulated portion. *Compare* Exh. 126, *with* IR 1-1. This adjustment reduces the hourly service charge (“HSC”) from \$35.3534 to \$35.3459. *Compare* Exh. 126, *with* IR 1-1. The revised FCC Form 1205 also reflects a slight decrease in other MPRs for installations, which were reduced by a range from \$0.00 to \$0.01. *Compare* Exh. 126, *with* IR 1-1. However, for each of the affected MPRs for installation, Comcast has selected an OSR below the revised MPR, as such, Comcast has not charged customers a rate above the maximum permitted. *See* IR 1-1; IR 1-2. Accordingly, Comcast does not need to adjust its proposed OSRs for installations.

3. Conclusion

The Department finds that Comcast has properly removed the time element associated with subscriber drops in the same manner as on prior Comcast FCC Forms 1205 approved by the Department. *See* IR 1-1. The Department also finds that Comcast has properly removed commission expenses from its regulated rate calculations. *Id.* All other information and calculations Comcast reported on its FCC Form 1205, and the accompanying explanation of the calculations appeared to be presented in accordance with FCC regulations. Accordingly, the Department finds that Comcast’s FCC Form 1205, as amended on March 31, 2016, was prepared in accordance with FCC regulations and that Comcast’s proposed rates are reasonable. *See* G.L. c. 166A, § 15; 47 C.F.R. § 76.923. A summary of the approved equipment and installation rates can be found in the attached Rate Schedule. *See* Attachment 1.

IV. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That Comcast's FCC Forms 1240 for its 82 regulated communities, as filed on September 30, 2015, are approved; and it is

FURTHER ORDERED: That Comcast's FCC Form 1205, as amended on March 31, 2016 is approved.

By Order of the Department

A handwritten signature in blue ink that reads "Karen Charles Peterson". The signature is written in a cursive, flowing style. Below the signature is a solid black horizontal line.

Karen Charles Peterson, Commissioner

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5 and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may be brought to the Federal Communications Commission pursuant to 47 C.F.R. § 76.944.